

UNITED STATES MISSION TO THE UNITED NATIONS

U.S. DISABILITY RIGHTS LAW: LIVING INDEPENDENTLY AND INCLUSION IN THE COMMUNITY

In U.S. law the concepts of living independently and being included in the community are expressed as outcomes that occur when individuals with disabilities are given control and choice connected to services and supports they receive, and have access, with appropriate accommodations, to the full range of community life. U.S. law and a recent U.S. Supreme Court decision (Olmstead) have clearly established that each individual with disability has the right to live independently in the community, but may require services and supports to do so. Living independently in the U.S. does not mean living alone or without your family, it means living where and with whom you choose when you are old enough to make these decisions. That age is determined by state law.

United States law and practice reflect concepts in article 15, including the chapeau (italicized) – “*States Parties to this Convention shall take effective and appropriate measures to enable persons with disabilities to live independently and be fully included in the community, including by ensuring that...*” This fact sheet provides explanations of United States law and web-retrievable resources that may be of assistance to delegations with respect to each paragraph of draft Article 15 (italicized).

Persons with disabilities have the equal opportunity to choose their place of residence and living arrangements (para (a)) and *persons with disabilities are not obliged to live in an institution or in a particular living arrangement* (para (b)): On February 1, 2001 President Bush launched the New Freedom Initiative and on June 19, 2001 signed Executive Order 13127, directing Federal agencies to remove barriers to people with disabilities living in the community and to assist States to respond to the Olmstead decision. On June 22, 1999, the Supreme Court held in its landmark Olmstead decision that Title II of the Americans with Disabilities Act (ADA) requires States, whenever possible, to place qualified individuals with mental disabilities in community settings rather than in institutions. The Supreme Court called on the States to develop "comprehensive, effectively working plans" to provide services to individuals with disabilities in the most integrated settings possible.

WEBSITES: <http://www.whitehouse.gov/news/releases/2001/06/20010619.html>;
<http://straylight.law.cornell.edu/supct/html/98-536.ZS.html>.

Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance, necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community (para (c)): In 1981 the Omnibus Budget Reconciliation Act (P.L. 97-35) authorized the Secretary of Health and Human Services to grant "home and community-based" waivers to enable States to furnish personal assistance and other services to individuals who, without such services, would require institutional care as long as costs under the waiver do not exceed the cost of providing institutional care to the target population. <http://www.thomas.loc.gov>.

Community services for the general population are available on an equal basis to persons with disabilities and are responsive to their needs (para (d)) and *persons with disabilities have access to information about available support services* (para (e)): The Americans with Disabilities Act requires that individuals with disabilities not be discriminating against on the basis of disability in public services, public accommodations, employment, and telecommunications. One of the central means by which this nondiscrimination is tracked is by assessing an individual's (with a disability) ability to participate in community services and opportunities along with other individuals. Many U.S. laws recognize the need to prepare communities, parents, and children with disabilities to transition toward independent living and provide funding for such things as community awareness, service opportunities and options, parent and child participation in the development of plans for services and supports, and training in how to advocate

for one's self. <http://www.disability.gov>; <http://www.usdoj.gov/crt/ada/pubs/ada.txt>;
<http://www.acf.hhs.gov/programs/add>.

(Circulated by the United States during the Seventh Session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, January 16 – February 3, 2006)